

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:
(202) 326-7999

December 16, 2002

Ex Parte Presentation

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of In-Region,
InterLATA Services in California, WC Docket No. 02-306*

Dear Ms. Dortch:

On behalf of SBC Communications Inc. ("SBC"), I am writing at the request of Commission staff to inform you that, pursuant to Rule 6.2 of the California PUC's Revised Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996, *see* Resolution ALJ-181 (App. D, Tab 201), the attached agreement amendment between Pacific and DSLnet was deemed approved by the California PUC on December 14, 2002.

In accordance with the Commission's Public Notice, DA 02-2333 (Sept. 20, 2002), SBC is filing this letter electronically through the Commission's Electronic Comment Filing System.

Yours truly,



Colin S. Stretch

Attachment

cc:	John Stanley	Lauren Fishbein
	Renée Crittendon	Brianne Kucerik
	Aaron Goldschmidt	Phyllis White
	Rhonda Lien	Qualex International
	Tracey Wilson	

ATTACHMENT

**AMENDMENT TO
INTERCONNECTION AGREEMENT**

BETWEEN

**PACIFIC BELL TELEPHONE COMPANY d/b/a
SBC PACIFIC BELL TELEPHONE COMPANY**

AND

DSLnet COMMUNICATIONS, LLC

WHEREAS, Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company ("Pacific"), formerly Pacific Bell and DSLnet Communications, LLC ("CLEC") ("collectively referred to as the "Parties") entered into an Interconnection Agreement which became effective on May 4, 2002 ("the Agreement");

WHEREAS, the Agreement permits the Parties to mutually amend the Agreement in writing;

WHEREAS, for purposes of Pacific's federal 271 application for California pending before the Federal Communications Commission ("FCC"), in WC Docket No. 02-306, for approval to provide in-state interLATA service pursuant to 47 U.S.C. §271, Pacific is making available to CLECs in California a certain interim DS3 Unbundled Network Element ("UNE") Loop recurring rate, as set forth below, upon the terms and conditions set forth herein;

WHEREAS, pursuant to Resolution ALJ 181, this Amendment will become effective, absent rejection of the advice letter by the Commission, thirty (30) days after the filing date of the Advice Letter to which this amendment ("Amendment") is appended ("Amendment Effective Date");

WHEREAS, this Amendment shall only be available to those CLECs in California who have or obtain the Amendment for Interim Rate DS1/DS3 Loops Amendment, previously announced by Pacific in Accessible Letter CLECC02-267;

NOW THEREFORE, the Parties agree to amend the Agreement based upon the following terms and conditions:

(1) The Agreement is hereby amended to replace the recurring rate for a DS3 UNE Loop currently set forth in such Agreement with the following interim recurring rate for a DS3 UNE Loop, effective as of the Amendment Effective Date:

Interim DS3 UNE Loop Recurring Rate (statewide average rate only): \$573.20

(2) This Amendment shall not modify the nonrecurring rate for the DS3 UNE Loop currently set forth in the Agreement, but rather, such nonrecurring rate shall continue to apply to the DS3 UNE Loop.

(3) For any DS3 UNE Loops CLEC has in service on the Amendment Effective Date, the interim DS3 UNE Loop recurring rate set forth above in this Amendment shall be effective between the Parties as of the Amendment Effective Date.¹ Pacific will calculate and apply to CLEC's bill any applicable credits or charges due CLEC as a result of such pricing change.

¹ Notwithstanding anything to the contrary in the Agreement (including, as applicable, this Amendment and any other Amendments to the Agreement ("Agreement")), in the event that any other telecommunications carrier should adopt provisions in the Agreement pursuant to Section 252(i) of the Act ("Adopting CLEC") after the effective date of a particular rate change, that rate change shall only apply prospectively beginning from the date that the MFN provisions becomes effective between Pacific and the Adopting CLEC following the Commission's order approving the Adopting CLECs Section 252(i) adoption or, the date such Agreement is deemed approved by operation of law ("Section 252(i) Effective Date"), and that rate change would not in any manner apply retroactively prior to the Section 252(i) Effective Date.

(4) The Parties agree that any billing adjustments and payments made in accordance with this Amendment are not subject to Pacific's obligations under the Service Performance Measurements and that liquidated damages shall not apply to any adjustment or credits made in connection with this Amendment and will not be included in or affect any past, current or future performance measurement results.

(5) The Term and Termination provisions set forth in the Agreement shall not apply to the rates, terms and conditions being incorporated into the Agreement by this Amendment. Rather, this Amendment, including the interim DS3 UNE Loop recurring rate set forth herein, will automatically terminate the earlier of: (1) the date the CPUC approves an interim or final DS3 UNE Loop recurring rate in Application 01-02-024/A.01-02-035, the CPUC's Unbundled Network Element (UNE) Reexamination for Pacific Bell Telephone Company, at which time the interim DS3 UNE Loop recurring rate set forth in this Amendment would automatically be replaced by the DS3 UNE Loop recurring rate established by the CPUC in such proceeding, subject to any appeals and associated review, and the Parties would engage in a true-up of the Commission-established DS3 UNE Loop recurring rate(s) retroactive to September 20, 2002, as to any DS3 UNE Loops that CLEC had in service during such true-up period (i.e., the true-up would be based upon the difference between the final Commission-established DS3 UNE Loop recurring rate and the recurring rate(s) paid by CLEC for DS3 UNE Loops during the true-up period), including the payment of refunds or recovery of surcharges, as applicable;² or (2) upon the effective date of any regulatory or judicial action, finding and/or order, including but not limited to by the FCC in its pending Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 01-361 (rel. Dec. 20, 2001) ("Triennial Review UNE rulemaking") finding that Loops or DS3 Loops are no longer a UNE. In the event of such action or order, Pacific will not be obligated by this Agreement or Amendment to provide DS3 UNE Loops, including but not limited to the DS3 UNE Loop terms and conditions and the nonrecurring DS3 UNE Loop rate set forth in the Agreement or the interim DS3 UNE Loop recurring rate set forth in this Amendment, but rather, any such obligations shall automatically terminate upon the effective date of any such action or order, at which time the DS3 UNE Loop (including the nonrecurring rate) set forth in the Agreement and the interim DS3 UNE Loop recurring rate set forth in this Amendment would be converted to the applicable DS3 Fiber Advantage Channel Termination rates, terms and conditions set forth in Pacific's C.P.U.C. No. 175-T Tariff if 90% or more of the traffic carried over the DS3 UNE Loop is jurisdictionally intrastate traffic, or Pacific's FCC No. 1 Tariff if more than 10% of the traffic carried over the DS3 UNE Loop is jurisdictionally interstate traffic, unless otherwise ordered or directed by the FCC in its Triennial Review UNE rulemaking. In the event of any such conversion(s), all applicable charges shall apply.

(6) The Parties acknowledge and agree that the rates set forth in this Amendment are each legitimately related to, conditioned on and consideration for, every other term and condition in this Amendment.

(7) EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS IN THE UNDERLYING AGREEMENT REMAIN UNCHANGED.

(8) Notwithstanding any other change of law provision in the Agreement, the Parties acknowledge and agree that in entering this Amendment neither Party is waiving any of its rights, remedies or arguments with respect to any orders, decisions or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court's opinion in *Verizon v. FCC*, 535 U.S. ____ (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, No. 00-101 (May 24, 2002); the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) (rel. November 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000) in CC Docket 96-98; or the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68 (the "ISP Intercarrier Compensation Order") (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). Rather, in entering

² In the event the CPUC first establishes interim DS3 UNE Loop recurring rate(s) in Application 01-02-024/A.01-02-035, then upon the CPUC's establishment of a final DS3 UNE Loop recurring rate(s), the final DS3 UNE Loop recurring rate(s) shall be retroactively true-up back to September 20, 2002, as to any DS3 UNE Loops that CLEC had in service during such true-up period (i.e., the true-up would be based upon the difference between the final Commission-established DS3 UNE Loop recurring rate and the recurring rate(s) paid by CLEC for DS3 UNE Loops during the true-up period).

into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings, including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. In addition to fully reserving its other rights, Pacific reserves its right to exercise its option at any time in the future to adopt on a date specified by Pacific the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions. In the event that the FCC, a state regulatory agency or a court of competent jurisdiction, in any proceeding, including without limitation, in the FCC's Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 01-361 (rel. Dec. 20, 2001) ("Triennial Review UNE rulemaking"), finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement and this Amendment do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party. In such event, the Parties shall have sixty (60) days from the effective date of the order to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the effective date of the order, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed in triplicate on the date(s) shown below by their respective duly authorized representatives.

DSLnet Communications, LLC

Pacific Bell Telephone Company d/b/a
SBC Pacific Bell Telephone Company
By SBC Telecommunications, Inc.
its authorized agent

By: Schula Hobbs

By: [Signature]

Name: Schula Hobbs
(Print or Type)

Name: Mike Awinbaun
(Print or Type)

Title: Sr Manager - Reg. Affairs
(Print or Type)

Title: For/ President-Industry Markets

Date: 11-13-02

Date: 11/13/02

AECN/OCN # 2668